

CLERK OF THE COURT

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9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 STATE OF NEVADA, BOARD OF
12 PSYCHOLOGICAL EXAMINERS,

13 Plaintiff,

14 v.

15 DAVID HOPPER,

16 Defendant.

CASE NO. A-10-626745-C

DEPT. XXXII

ORDER

17 This matter came before the Court on November 6, 2014, for a decision on Plaintiff
18 State of Nevada Board of Psychological Examiners' (Board) request for a permanent
19 injunction against Defendant David Hopper (Hopper) after a four-day evidentiary hearing.
20 David Hopper was present, along with his counsel John A. Hunt, Esq. Deputy Attorney
21 General Sarah A. Bradley was present on behalf of the Board.

22 On October 5, 2010, the Board filed its Verified Complaint for Injunctive Relief. On
23 April 21 and 28, 2014, and October 13 and 14, 2014, the Court conducted an evidentiary
24 hearing on the Board's Complaint.

25 On November 6, 2014, the parties appeared before the Honorable Rob Bare, District
26 Court Judge, who presented the Findings of Fact and Conclusions of Law that were
27 transcribed and set forth in the Recorder's Transcript ("Trans.") that is attached hereto as
28 Exhibit A.

FINDINGS OF FACT

A. The Parties

1. Plaintiff, Nevada Board of Psychological Examiners (Board), is trusted with and has the authority to deal with issues relevant to the unauthorized practice of psychology. See NRS 641.010; Trans. at 4:1–3. The Board has standing and may maintain a suit for an injunction against any person practicing psychology without a license and such an injunction may be issued without proof of actual damage. See NRS 641.316; Trans. at 4:8–12. The provisions of NRS 641.316 are expressly intended to be preventive as well as a punitive measure. *Id.* at 4:13–14.

2. Defendant, David Hopper, is a licensed alcohol and drug abuse counselor. Hopper is not licensed as a psychologist nor has he ever been so licensed in this State or elsewhere. Hopper has obtained extensive training and credentialing in a variety of therapy fields that do not include licensure in psychiatry, psychology, neuropsychology and related disciplines; Hopper's considerable training is believed to explain his conduct, behavior and multiple violations of the law. This training and experience, as is set forth more fully below, does not excuse nor is it a defense to the prohibitions, restrictions, limitations and constrictions of Chapter 641. See *infra*.

B. Factual Findings

1. The Board contends and submitted evidence to the Court through testimony and exhibits indicating that the "practice of psychology" as set forth in NRS 641.025, and which includes, among other terms, the term "biofeedback," is inclusive of the acts continually conducted by Hopper from August, 12, 2006, to currently and that Hopper does not satisfy the requirements for the exemption found in NRS 641.029 or any other provision of Nevada law.

2. The Board also contends that the use of the term "neuropsychophysiolgologist" by Hopper when he is not a licensed psychologist is a knowing violation of NRS 641.440 and that Hopper "has unlawfully held himself out as a neuropsychophysiolgologist" to the public. See e.g., Trans. at 3:24–25.

1 3. Hopper has not applied for nor has he ever obtained a license to practice
2 as a psychologist.

3 4. Hopper has engaged in the practice of biofeedback and other
4 psychological testing and competency evaluations on numerous occasions that constituted
5 multiple violations of the provisions of Chapter 641 over several years pursuant to NRS
6 641.440. Further, credible expert testimony from Dr. Gary Lenkeit established that
7 biofeedback is not within the scope of the practice of an alcohol and drug abuse counselor.
8 Trans. at 14:11–12. See also *Webb v. Clark County School District*, 125 Nev. 611 (2009).

9 5. Hopper presented evidence that other jurisdictions outside the state of
10 Nevada allow individuals who are not licensed psychologists to provide treatment such as
11 biofeedback to patients. See Trans. at 6:18–19.

12 6. Upon a thorough review of the record and the facts presented, the Court
13 finds that Hopper used the term “neuropsychophysiolgologist” in such a manner that an average
14 member of the public would believe that Hopper was a psychologist. Trans. at 12:4:10. This
15 Finding of Fact has bearing upon the Conclusions of Law and bases for the injunctive relief
16 afforded below. See *infra*.

17 7. The Board presented expert testimony including, *inter alia*, testimony
18 from Dr. Thomas Kinsora who had an opportunity to review Hopper’s work. Dr. Kinsora
19 testified as an expert that it appeared that Hopper was engaged in neuropsychology without a
20 license to do so and was found to be “credible” by the court. Dr. Kinsora further testified that
21 the results of Hopper’s test results were “horrible and horrendous” and that these were Dr.
22 Kinsora’s words under oath. Trans. at 15:8–16.

23 8. Hopper’s education and training made it difficult for him to limit himself to
24 alcohol and drug counseling within the confines of NRS 641C, *et seq.* Trans. at 16:21–23.

25 9. Dr. Elizabeth Neighbors, Director of Lake’s Crossing Center, testified that
26 Hopper engaged in activities regarding criminal competency which requires licensure as a
27 psychologist and/or psychiatrist and approval by the State of Nevada, Division of Public and
28 Behavioral Health of the Department of Health and Human Services under Nevada law and

1 Hopper meets neither of these requirements. Trans. at 15:17–24, 16:12–16. See also
2 NRS 178.415.

3 10. Mary Alice Stockdale from Nellis Air Force Base testified about
4 evaluations Hopper conducted for service members. After hearing Ms. Stockdale's testimony,
5 the Court finds that the efforts Hopper put forth in those evaluations contained evidence of
6 the unauthorized practice of psychology. Trans. at 15:25–16:11.

7 CONCLUSIONS OF LAW

8 A. Jurisdiction

9 1. This Court maintains primary jurisdiction over the instant matter pending
10 before the Court regarding the facts and issues presented in this case. Specifically, this Court
11 has primary jurisdiction over whether Hopper has wrongfully engaged in the practice of
12 psychology, in violation of Nevada Revised Statutes (NRS) Chapter 641, whether the unlawful
13 practice of biofeedback is within the purview of the Board, and whether Hopper is operating
14 outside the scope of his current license as an alcohol and drug abuse counselor, excluding
15 any potential disciplinary action initiated by the Board of Examiners for Alcohol, Drug and
16 Gambling Counselors.

17 2. The Executive Branch of the State of Nevada is tasked with enforcing the
18 statutes and regulations passed by the Legislative Branch, but it is the providence of the
19 Judicial Branch of this State to be the final arbiter regarding the interpretation of those
20 statutes and regulations.

21 3. This Court has reviewed the documents submitted by Hopper concerning
22 the Legislative intent of NRS 641.025, 641.029, *et al.* but does not reach any conclusion as to
23 the Legislative intent of those statutes because those statutes are clear on their face and are
24 not vague as a matter of law. A Court is prohibited from reviewing the legislative intent of
25 statutes that are clear on their face. *Robert E. v. Justice Court*, 99 Nev. 443, 445,
26 664 P.2d 957, 959 (1983).

27 4. This Court finds that what other jurisdictions permit or allow as to
28 unlicensed individuals and/or non-psychologists engaging in the practice of biofeedback is not
relevant in the State of Nevada. See, e.g., Trans. at 7:16–8:22.

1 B. The Legislative Declaration of Chapter 641 and Chapter 641C

2 1. The Legislature's declaration in NRS 641.010 is important and tells us
3 that:

4 the practice of psychology is declared to be a learned profession
5 affecting the public safety, health and welfare and subject to
6 regulation to protect the public from the practice of psychology by
7 unqualified persons ... when the Legislature sends that kind of
8 message and tells us that's the whole intention behind the
9 chapter, it demonstrates to me as a judge that the Legislature
takes this seriously in that there is an effort, I think that's well
within that branch of government the Legislature, to protect the
public. That's what this is all about. *This is a public protection
statutory scheme.*

10 Trans. 4:20–5:4 (*emphasis added*).

11 2. The Legislature has defined the practice of "psychology" in NRS 641.025.
12 See Trans. at 5:14–15. This definition includes "[p]sychological testing and the evaluation of
13 personal characteristics, including, without limitation, intelligence, personality, abilities,
14 interests, aptitudes and neuropsychological functioning" and "[b]iofeedback," all of which are
15 at issue in the instant matter. See NRS 641.025(1) and (6).

16 3. Pursuant to the express provisions of NRS 641.025(6) the Legislature
17 has defined the term "biofeedback" as part of the practice of psychology. The use of the term
18 "biofeedback" as a single term signifies that the Nevada Legislature intended to include
19 "biofeedback" as a component of the practice of psychology. See Trans. at 5:22–25, 7:16–18.

20 4. The practice of counseling alcohol and drug abusers as well as problem
21 gamblers is set forth at NRS 641C.010, *et seq.* and was considered by the court in rendering
22 this decision and Order. See Trans. at 9:22–10:25. More specifically, the Court considered
23 whether NRS 641C afforded Hopper any exemption from the punishment, sanctions,
24 injunctive provisions, equitable relief and other forms of penalties the Board may impose upon
25 a violator of Chapter 641.

26 5. NRS 641.440 addresses the applicability of Chapter 641 and the persons
27 who are exempt from Chapter 641. This Court holds that pursuant to NRS 641.440 a person
28 cannot represent himself or herself as a psychologist or, "use any title, description which

1 incorporates the word psychology, and goes on from there." Trans. at 11:25–12:1. This Court
2 further holds that this statute precludes an individual from "indicating or implying that he or
3 she is a psychologist, unless [he or she has] a license." Trans. at 12:3–4.

4 **C. Findings and Violations of Chapter 641**

5 1. The Court holds that, after conducting the evidentiary hearing and
6 reviewing the testimony and evidence from experts such as Dr. Lenkeit and Dr. Kinsora,
7 Hopper has engaged in the practice of psychology by performing biofeedback, engaging in
8 psychological and/or psychometric testing, conducting psychological and/or
9 neuropsychological evaluations, calling himself a "neuropsychophysiolgologist," and otherwise
10 holding himself out and/or representing himself as a psychologist without the required license
11 issued by the Nevada Board of Psychological Examiners.

12 2. The Court further holds that Hopper has operated outside the scope of
13 his license as an alcohol and drug abuse counselor by performing biofeedback, engaging in
14 psychological and/or psychometric testing, conducting psychological and/or
15 neuropsychological evaluations, calling himself a "neuropsychophysiolgologist," and other
16 practices outside the scope of his auspices as an alcohol and drug counselor.

17 3. In NRS 641.029, certain licensed professionals and members of the
18 clergy may be exempt from the application of NRS Chapter 641 if they do not "commit an act
19 described by NRS 641.440 or represent himself or herself as a psychologist." Trans. at
20 11:11–14. Hopper is a licensed alcohol and drug abuse counselor and licensed alcohol and
21 drug abuse counselors are included in the list of possibly exempted professions. The
22 question before the Court then becomes: has Hopper committed an act in NRS 641.440 or,
23 separately and distinctly, has he represented himself as a psychologist? The Court finds,
24 after careful consideration, that Hopper committed an act described in NRS 641.440 in that
25 he represented himself as a psychologist, used a title that incorporated the word "psychology"
26 through the use of the title "neuropsychophysiolgologist" and engaged in the practice of
27 psychology by engaging in biofeedback and psychological and/or psychometric testing and/or
28 psychological and/or neuropsychological evaluations. Therefore, the Court finds that Hopper

1 is not exempt from the provisions of NRS Chapter 641 pursuant to NRS 641.029. Trans. at
2 13:18–21.

3 4. The Court also finds that the title used by Hopper,
4 "neuropsychophysiolgologist," and activities engaged in by Hopper such as
5 "neuropsychophysiology," and conducting psychological and/or neuropsychological
6 evaluations were misleading and deceptive, and a reasonable member of the public would
7 have been led to believe that Hopper was a psychologist. Trans. at 12:11–18. Accordingly,
8 the Court finds that Hopper misleadingly held himself out as a psychologist. See Trans. at
9 11:15–12:10.

10 5. NRS 641C.065(2) expressly provides that the clinical practice of
11 counseling alcohol and drug abusers does not include "the use of a psychological or
12 psychometric assessment test to determine intelligence, personality, aptitude and interests."
13 Trans. at 10:23–11:1. Testimony and evidence presented to the Court indicated that Hopper
14 engaged in the use of psychological or psychometric tests in conducting psychological
15 evaluations and/or neuropsychological evaluations. Pursuant to NRS 641C.065(2) and the
16 other evidence presented to the Court, the Court holds that the use of psychological or
17 psychometric tests and/or the conducting of psychological evaluations and/or
18 neuropsychological evaluations by Hopper is outside the scope of practice authorized by NRS
19 and NAC Chapters 641C for licensed alcohol and drug counselors.

20 6. As a matter of law, as held by the Nevada Supreme Court in *Webb v.*
21 *Clark County School District*, 125 Nev. 611 (2009), the practice of biofeedback requires a
22 license to practice psychology issued by the Board.

23 7. This Court, therefore, holds that biofeedback, as a matter of law, is the
24 practice of psychology.

25 8. The practice of biofeedback requires a license to practice psychology in
26 the reasoned opinion of an expert, Dr. Lenkeit, who testified under oath. Hopper readily
27 admits to the Court that he has engaged in the practice of biofeedback and does not possess
28 a license to practice psychology. Accordingly, this Court hereby finds, and this finding is

1 supported by expert testimony and the admissions of Hopper, that Hopper's practice of
2 biofeedback constitutes the practice of psychology without the required license issued by the
3 Nevada Board of Psychological Examiners in violation of Chapter 641. See e.g., Trans. at
4 13:1–3, 14:10–20. Therefore, Hopper, at all relevant times expressed in the pleadings, was in
5 violation of the provisions of Chapter 641, generally, and, *inter alia*, NRS 641.440 and NRS
6 641C.065(2).

7 **D. The Board's Request for Injunctive Relief**

8 1. It is within the sound discretion of a district court to decide whether to
9 grant a permanent injunction and such a decision will not be overturned unless it is an abuse
10 of discretion. *Commission on Ethics v. Hardy*, 125 Nev. 285, 291, 212 P.3d 1098, 1103
11 (2009).

12 2. NRS 641.316 allows the Court to enter an injunction against any person
13 practicing psychology without a license.

14 3. An injunction entered pursuant to NRS 641.316 may be issued without
15 proof of actual damage sustained by any person, this provision being a preventative as well
16 as punitive measure.

17 4. As stated above, the Court finds that Hopper did and has engaged in the
18 practice of psychology without a license by his use of the title "neuropsychophysiologist,"
19 conducting biofeedback, engaging in psychological and/or psychometric testing, conducting
20 psychological and/or neuropsychological evaluations, holding himself out to the public as a
21 psychologist, and engaging in other activities that constituted the practice of psychology.

22 5. Hopper may be subject to discipline by other courts, commissions,
23 boards, entities and/or qualified examiners with appropriate jurisdiction and powers.

24 6. Inexplicably and subsequent to this Court's November 6, 2014 hearing
25 wherein this Court rendered its decision in this matter, and prior to the entry of this Order,
26 Hopper filed a prolix "Petition for Advisory Opinion and/or Declaratory Order Regarding the
27 Practice of Biofeedback by Licensees of the Nevada Board of Examiners for Alcohol, Drug
28 and Gambling Counselors" on January 12, 2015. This petition is a blatant and unwarranted

attempt to circumvent the clear imprimatur of this court and the intent of the Legislature. Hopper seeks to place himself above the law, the well-reasoned decision of the district court and, incredulously, asks a tribunal with inferior authority to grant him relief where none is warranted. Hopper and his counsel are admonished for this egregious attempt to confuse the issues and attempt to infuse an adjudicating body into this dispute that cannot possibly intervene or alter the decisions of this Court. Hopper is estopped from circumventing the jurisdiction of this court and seeking a ruling from such a tribunal with inferior authority, which may be inapposite to this ruling.

7. This order is specific as to Hopper and his conduct while performing functions outside the scope of his licensure as a licensed drug and alcohol counselor and while unlicensed as a psychologist in the State of Nevada. The Court makes no finding regarding the issues in this case as it relates to the scope of practice of other licensees regulated by the other licensing boards included in NRS 641.029. Each of those boards, working in conjunction with the Board of Psychological Examiners, may review their statutes and regulations and make independent determinations as to whether the modalities listed in NRS 641.025 are acceptable practices for each of those professions. In deciding the instant case and rendering this Order, the Court did not review or determine the appropriate scope of practice for other licensed professionals and kept its focus solely on the relevant provisions of Chapters 641 and 641C of NRS and NAC.

DECISION

Now therefore, based upon the foregoing and other good cause appearing:

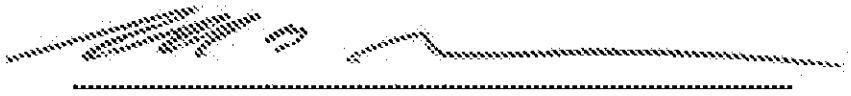
IT IS HEREBY ORDERED that David Hopper is permanently restrained and enjoined from performing biofeedback, conducting and/or interpreting psychological testing, conducting psychological and/or neuropsychological evaluations and otherwise practicing psychology without obtaining a license from the Nevada Board of Psychological Examiners.

IT IS HEREBY ORDERED that David Hopper is permanently restrained and enjoined from using the title "neuropsychophysiolgologist" or any other title that would mislead the public into believing that he can practice psychology.

1 IT IS HEREBY ORDERED that David Hopper may not rely on his license as an alcohol
2 and drug abuse counselor in this state to practice or perform the functions of a psychologist,
3 including but not limited to, the use of biofeedback.

4 IT IS HEREBY FURTHER ORDERED that any violation of this Order shall be
5 punishable by contempt, censure, fines equivalent to those imposed for gross misdemeanors,
6 disqualifying Hopper from seeking psychology licensure and such other and further relief as
7 the court may deem appropriate.

8 DATED this 5 day of March, 2015.

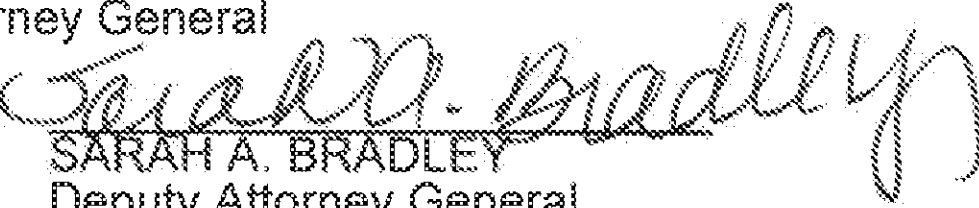
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JUDICIAL DISTRICT JUDGE

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

11 Submitted by:

12 ADAM PAUL LAXALT
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